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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-1482

BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS, LOCAL NO. 70, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, *Petitioner,*

VS.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

AND

CALIFORNIA TRUCKING ASSOCIATION, INC., *Intervenor.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF CALIFORNIA TRUCKING ASSOCIATION, INC. IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 63-64)[1] is reported at 470 F.2d 509; the Board's decision and order (Pet. App. 2-62) are reported at 194 NLBR No. 106.

JURISDICTION

The judgment of the court of appeals was entered on February 26, 1973. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

Whether substantial evidence on the record as a whole supports the Board's finding that the Union violated Section 8(b) (3) of the Act by failing and refusing to adopt, sign, and abide by agreements negotiated for it by the multi-employer-multi-union collective bargaining unit of which the Union was a member; and that the Union violated Sections 8(b) (1) (B) and 8(b) (3) of the Act by attempting to negotiate separate and different contracts with employer members of California Trucking Association, Inc., and threatening, picketing, and engaging in other concerted activities against employers to com-

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[1] "Pet. App." refers to the Appendices bound with the petition. "R" references are to the pleadings, the decision and order of the Board, and other papers and proceedings bound as "Volume I, Volume of Pleadings" in the court below. "Tr." references are to the stenographic transcript reproduced and filed with the court below; "G.C.X." references are to exhibits of the Board's General Counsel reproduced and filed in the court below.

pel individual employer members of California Trucking Association, Inc. to negotiate separately with the Union, rather than through the multi-employer bargaining unit.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth at Pet. App. 1.

STATEMENT

A. THE BOARD'S FINDING OF FACT

1. Background

Teamsters Union Local 70 is a constituent local affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and as such is governed by the constitution and directives of the International Union (Pet. App. 10). California Trucking Association, Inc. is the collective bargaining representative of most of the major trucking companies in the State of California, including 66 motor freight carriers in Alameda County (Pet. App. 10).

By virtue of written powers-of-attorney given respectively in October, 1963 and November, 1966 by appropriate officials, the Union became part of a national multi-union negotiating group represented by the National Over-the-Road and City Cartage Policy

and Negotiating Committee.[2] This Committee negotiated with Trucking Employers, Inc., the authorized bargaining representative for a national multi-employer bargaining unit composed of several associations of trucking companies, including the California Trucking Association and its 66 Alameda County members who had authorized CTA and TEI to negotiate for them. The result of the multi-employer-multi-union negotiations was a National Master Freight Agreement and several local area supplemental agreements (including the Joint Council 7 Supplement covering Teamster Unions in the San Francisco Bay Area, including Local 70) for the terms 1964-1967 and 1967-1970 (Pet. App. 11).

2. The 1970 Negotiations

a. Background

The 1970 negotiations were conducted in the same manner as the 1964 and 1967 negotiations. The parties met not to negotiate a completely new agreement, but rather to bargain over changes and revisions in the old agreement. Under the specific terms of the 1967-1970 National Master Freight Agreement, the contract was not terminated, but kept in full force and effect throughout the negotiating period.

CTA and Trucking Employers, Inc., as in the past, solicited "Authorizations to Represent" from the various employers involved. The overwhelming majority of CTA members, including 66 employers in

[2]The name of this national negotiating committee was shortened to "National Freight Industry Negotiating Committee" for the 1970-1973 negotiations (Pet. App. 10).

Alameda County, executed Authorizations to Represent which appointed CTA and TEI to act as their representatives in the negotiation of the National Master Freight Agreement and applicable supplemental agreements. In addition, the authorization granted authority to the Executive Policy Committee of TEI to amend, ratify, conclude, or reject any and all collective bargaining agreements resulting from the negotiations. Thus, under the Authorization to Represent executed by CTA members, CTA and TEI had full, final and complete authority to negotiate the National Master Freight Agreement and supplemental agreements which covered the individual employers' operations (G.C.X. 23).

In 1964, and again in 1967, the International Brotherhood of Teamsters had solicited powers of attorney from its constituent locals. For 1970, however, the union national negotiating committee did not solicit new powers of attorney from its various locals, due to the fact that under the International's Constitution the local unions would continue to be party to the National Master Freight Agreement and the applicable supplements, as they could withdraw only upon six months' notice to the International and for good cause show to the satisfaction of the Union (Pet. App. 11-12, Tr. 334, G.C.X. 12, 57). The employers were notified that the bargaining agent for the various Teamster unions was not going to solicit new powers of attorney due to internal union procedures which automatically renewed those authorizations (Pet. App. 12, G.C.X. 57).

Local 70 was completely aware of the internal procedures necessary to withdraw from the multi-union bargaining unit, as were the other constituent locals of Joint Council 7. In the fall of 1969 Local 70 and other affiliates of Joint Council 7 requested permission from General Vice-President Frank Fitzsimmons to be excluded from the multi-union collective bargaining unit covered by the National Master Freight Agreement. Some time prior to December 22, these unions had formally requested the International Union to approve their withdrawal and grant them permission to bargain as a separate unit with the employers involved. (Pet. App. 13, G.C.X. 12). However, on December 22, most of the unions in Joint Council 7, and in particular Local 70, recinded their previous request to separate themselves from the national multi-union bargaining unit (Pet. App. 13, G.C.X. 24). More specifically, Local 70 and most of the unions in Joint Council 7 signed a document in which they unequivocally expressed their "desire to withdraw their prior request for a separate bargaining unit and remain part of the multi-union bargaining unit covered by the National Master Freight Agreement" (Pet. App. 13, G.C.X. 24). Thus, prior to the negotiations, all of the employers involved in this proceeding and Local 70 clearly evidenced their desire to remain part of the multi-employer-multi-union bargaining unit, and to be represented by the same negotiation committees which had represented them in the two preceding negotiations (Tr. 237-238).

b. The National Negotiations

1. Background.

The National Master Freight Agreement from 1967 to 1970 contained alternative methods of terminating or modifying the agreement. The first provision is found in Article 37, Section 1:

> "This Agreement shall be in full force and effect from April 1, 1967, to and including March 31, 1970, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration."

The above section is not the only method by which the agreement can be re-negotiated and was not the method used by the parties in structuring the 1970 negotiations (Pet. App. 14). Thus, Section 2 of Article 37 provides:

> "Where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice of at least sixty (60) days prior to March 31, 1970, or March 31st of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement."

Section 3 of Article 37 provides that after negotiating, if the parties are unable to agree upon changes or modifications in the agreement, either party shall be

permitted legal or economic recourse to support its demands. The import of Section 3 is that no such legal or economic activity will be undertaken until the parties conclude that they are unable to agree upon such changes and revisions.

On November 4, 1969, the national multi-union bargaining committee notified all employers party to the National Master Freight Agreement, including those represented by CTA, on behalf of each of the Teamster locals and affiliates signatory to and affected by the National Master Freight Agreement and its supplements, that the unions "desire to negotiate changes and revisions in the terms and conditions of such agreement . . . for the contract period commencing April 1, 1970, as provided in Article 37 thereof" (Pet. App. 14, G.C.X. 20). It is clear from that letter that the unions had chosen to negotiate changes and revisions in the terms of the agreement without cancelling it as provided for in Section 1. Prior to the Union's letter of November 24, 1969 indicating that it wished to negotiate changes and revisions in the National Master Freight Agreement and supplemental agreements, union representatives began a series of conferences to formulate contract proposals to be made in the forthcoming negotiations (Pet. App. 14-15). The International Brotherhood of Teamsters appointed a committee of about eighty union representatives from all over the country to serve on its national negotiating committee. Representatives from the Western Conference area included Fred Hofmann, Secretary-Treasurer of Teamsters Local 287

of San Jose; Tim Richardson, Business Manager of Teamsters Local 85 of San Francisco; A. N. Leishman, Secretary-Treasurer of Teamsters Local 70 of Oakland; and George King, an International Organizer attached to the Western Conference of Teamsters. In addition to serving on the unions' national negotiating committee, the aforementioned individuals comprised the national committee's subcommittee for bargaining on the Joint Council 7 Local Pick-up and Delivery Supplemental Agreement (Pet. App. 14-15, Tr. 57).

The national negotiating committee for the Teamsters Union had at least two preliminary meetings prior to the actual commencement of negotiations on January 7, 1970. On December 1, 1969, the national negotiating committee met at the headquarters of the International Brotherhood of Teamsters in Washington (Tr. 451). There, contract proposals submitted by various subcommittees were approved by the national negotiating committee (Pet. App. 15, Tr. 451). Later in December, the group met at the Palmer House in Chicago (Pet. App. 15, Tr. 451). In addition to the national negotiating committee, each local union involved in the National Master Freight Agreement negotiations sent two representatives to hear and approve of the proposals which the Teamsters were to make in the forthcoming negotiations (Pet. App. 15, Tr. 453). Local 70's Secretary-Treasurer, A. N. Leishman, was present at each of these meetings. He participated in the formulation of the proposals for the National Master Freight Agreement, as he

was part of the unions' negotiating committee. (Pet. App. 15-16, 45-47, Tr. 450-453).

2. The Negotiations.

The first formal meeting between the parties took place on January 7, 1970,[3] at the Hilton Hotel in Washington, D.C. (Pet. App. 16, Tr. 110, 160, 163, 340, 351, 1206). At that meeting, Frank Fitzsimmons, on behalf of the unions' negotiating committee, read a list of all local unions being represented in the National Master Freight Agreement and supplemental agreement negotiations. (Tr. 454). When Fitzsimmons read Local 70's name as one of the unions being represented by the national negotiating committee, Leishman, who was present in the room, raised no claim or contention that Local 70 was not participating in, or bound by, the negotiations or the national committee (Pet. App. 16, Tr. 145, 343, 454). Later in the January 7 meeting, the unions' negotiating committee presented its contract proposals to the TEI negotiating committee (Pet. App. 16, Tr. 160, 454).

Representatives of TEI and the unions' national negotiating committee continued to meet to negotiate the terms and provisions of the revised National Master Freight Agreement. At the same time, the TEI committee and the Union committee delegated to other representatives the authority to negotiate changes and revisions in the various agreements supplemental to the National Master Freight Agreement. The subcommittees were empowered to negotiate to the fullest

[3]All dates hereafter are in 1970 unless otherwise specified.

extent possible on all terms except monetary items, which were left exclusively to the respective national negotiating committees (Pet. App. 17, Tr. 147, 357, 359, 535, 537). As to all of the non-monetary items, such agreements as were reached by the subcommittee negotiators would be approved by the national negotiating committees. However, in the event that the subcommittees were unable to agree on changes or revisions of certain non-monetary items, these items were referred back to the respective national negotiating committees for final resolution. At no time during the negotiations was any subcommittee authorized to enter into separate agreements with any employer or group of employers. The national negotiating committee at all times held the full and final authority over all of the terms and provisions of the supplemental agreements, especially those which could not be resolved by subcommittee representatives. These deadlocked items had to be referred back to the national negotiating committees so that they would have a chance to bargain concerning them prior to any economic or legal action.

In accordance with the foregoing arrangements, the national negotiating committees met in Washington, D.C. throughout February and March, concluding on April 2 a tentative agreement on all terms of the National Master Freight Agreement (Pet. App. 18, Tr. 162, 352). Along with certain language changes in the National Master Freight Agreement, the settlement provided for a wage increase for all employees of $1.10 per hour for a three year and three month

period ending June 30, 1973 (Pet. App. 18, Tr. 465). In addition, the national negotiators agreed upon certain increases in payments to health and welfare trust funds, pension trust funds, an extra holiday, and certain changes in vacation allowances. This understanding was ultimately incorporated into a written agreement between the Teamsters Union and the employers (G.C.X. 19).

Following the tentative settlement of April 2, certain Teamster unions in the Chicago area, who comprised a bargaining unit separate and apart from that established by the National Master Freight Agreement, went on strike due to their displeasure with the wage proposal of $1.10 per hour over three years offered by Chicago area employers. The unions in Chicago were insisting on a settlement of $1.65 an hour over three years. The economic action which occurred in Chicago resulted in a modification of the tentative settlement reached between the two national negotiating committees (Pet. App. 18-19). The committees agreed that in the event the unions in Chicago were successful in compelling the Chicago area employers to agree to a contract with a wage rate higher than $1.10 an hour over three years, the National Master Freight Agreement negotiations would be reopened for consideration of wage rates only. The parties would have thirty days in which to negotiate wages in light of the Chicago settlement, following which, if no agreement were reached, either party could resort to economic or legal action (Tr. 352, 465). This proviso was incorporated in a Memorandum of

Understanding which became part of the tentative settlement formalized at a meeting between the representatives of the employers and unions at the headquarters of the International Brotherhood of Teamsters in Washington, D.C. (G.C.X. 55, pages 3-5).[4] This settlement was submitted to the employees covered by the National Master Freight Agreement and its supplements for ratification which resulted in a favorable vote by mail ballot announced on May 18, 1970 (Pet. App. 18, 22, G.C.X. 25).

c. The Joint Council 7 Negotiations

The subcommittee appointed by the national negotiating committees for negotiating the Joint Council 7 Supplemental Agreement met in Washington, D.C. approximately twelve times between February 17, 1970, and March 13, 1970 (Pet. App. 13, Tr. 150). Leishman, Secretary-Treasurer of Local 70, attended all of the meetings (Pet. App. 17, Tr. 150). As Local 70's representative, Leishman participated fully in the meetings and, on behalf of Local 70, had a great deal to say on certain portions of the Supplemental Agreement (Pet. App. 17, 47, Tr. 151-154).

On March 13, all of the items which had been agreed to with respect to the Joint Council 7 Supplemental Agreement were finalized in writing (Pet. App. 17, G.C.X. 17). The items which could not be resolved by the subcommittees were deadlocked and

[4]Also approved at that meeting was the Joint Council 7 Pick-up and Delivery Supplemental Agreement as negotiated by the subcommittees of the national negotiating committees and finalized on April 17 (G.C.X. 55, pages 15-16).

referred back to the national negotiating committee for resolution (Pet. App. 17).

On April 17, the representatives of the subcommittees negotiating the Joint Council 7 Supplemental Agreement went before a meeting of the national negotiating committees at the Union's headquarters in Washington, D.C. (Pet. App. 17-18). Present for the union subcommittee were Leishman, Hoffmann and Richardson. During the meeting, the national committees resolved the differences between the parties on language in the health and welfare provision of the Supplemental Agreement (Tr. 158, 284, 287, 1067), and all of the other deadlocked items were settled on the basis of the tentative monetary settlement reached on April 2 (Pet. App. 18).

d. After the Negotiations

On May 18, the Teamsters Union announced that the tentative settlement of the National Master Freight Agreement and all Supplemental Agreements had been ratified by a nationwide vote of the employees affected (Pet. App. 18). Under the terms of the settlement, the employees were to receive $1.10 an hour over the following three years and three months, subject only to the possible reopening of the contract for thirty days to discuss wages in the event that the Chicago unions obtained a higher settlement. In addition, all of the Supplemental Agreements, including the Joint Council 7 Supplemental Agreement, were ratified by the membership of the Teamsters Union (Pet. App. 18, Tr. 311).

The Chicago area unions were successful in their strike and secured a contract calling for a wage increase of $1.65 an hour over a three-year period (Pet. App. 19, Tr. 270-271). This settlement resulted in the reopening of the National Master Freight Agreement for the purpose of negotiating new wage rates. These negotiations were held from July 2 to July 6, and resulted in an agreement on wage increases of $1.85 an hour instead of $1.10 an hour (Pet. App. 19, 44, Tr. 270-271).

As far as the Joint Council 7 Supplemental Agreement was concerned, there were two meetings following the final settlement by the national committee on April 17. The first was on June 19 at the Western Conference of Teamsters' office in Burlingame, California. Among those present for the union negotiating committee was Local 70's Secretary-Treasurer Leishman. The purpose of the meeting was to agree on language to be incorporated in the agreement. After two or three hours, the parties were in accord on the language of the Agreement (Pet. App. 19, Tr. 1064-1066).

A second meeting occurred on July 29 at the Western Conference of Teamsters' building in Burlingame. Leishman was not at this meeting, although he had been notified of it by Fred Hofmann, the union negotiating committee chairman. At this meeting, the representatives reviewed the galley proofs of the settlement, and finalized vacation and health and welfare language (Pet. App. 19, Tr. 1067-1069). Joseph Diviny, president of Joint Council 7, signed the

agreement on behalf of all affiliated local unions, including Local 70 (Pet. App. 19).

e. **Local 70's Renunciation of the Agreement**

In spite of the fact that the 1967-1970 contract had never been terminated, and an impasse in negotiations had not been reached, shortly after midnight on April 1, Local 70 began strike activity against members of CTA in Alameda County (Pet. App. 20). The strike activity was accompanied by pickets carrying signs bearing the legend "Teamsters Local 70 On Strike." By April 2, the strike was widespread, affecting virtually every member of CTA operating a terminal within the jurisdiction of Local 70 (Pet. App. 20, Tr. 163, 176, 584, 681, 913, 1078-1079).

On the evening of Friday, April 3, Judge Mosbacher of the Alameda County Superior Court issued a temporary restraining order and order to show cause halting the picketing and strike activity engaged in by Local 70 (Pet. App. 20, Tr. 1080). The order to show cause was returnable on April 6, at which time a hearing was held before Judge Lercara of the same court (Tr. 1080). Judge Lercara issued a preliminary injunction on April 7 banning all picketing, work stoppages and other economic activity by Local 70 arising out of its disagreement with the national negotiations in Washington, D.C. (Pet. App. 21, G.C.X. 255).

An object of the picketing and economic activity directed against employer members of CTA in early April was Local 70's intent to break out of the multi-

union bargaining unit to negotiate a different contract with the struck employer members of CTA (Pet. App. 35-36). This was stated by James Muniz, President of Local 70, in a radio interview in early April (Pet. App. 22). Muniz said that the Union was taking economic action in order to negotiate a better contract with the employer. He referred to the Chicago strike, stating that Alameda County used to be the prime pick-up and delivery contract in the nation, but now other areas were getting ahead. (Pet. App. 22, Tr. 1082).

Picketing against employer members of CTA broke out again in early May (Pet. App. 30). On or about May 8, several members of CTA were picketed by persons carrying signs claiming that they were members of Teamsters Union Local 208 (Los Angeles) and other local unions (Pet. App. 30-31). Some of the pickets carried signs on which was printed "Teamsters Local 70 On Strike," but had the "70" altered to some other number by marking pen. The "7" was changed to a "2" and an "8" added behind the "0" to make the legend "208". Other signs used read, "Teamsters Local 104," "170," "457" and "705" (Pet. App. 31, Tr. 703-713, 799-801).

Local 70's object of separating itself from the multi-union negotiations because of its dissatisfaction with the tentative agreement was clearly announced in a letter sent by the officers of Local 70 to the International Brotherhood of Teamsters on May 13 (Pet. App. 23-25, G.C.X. 10). In that letter Local 70 boldly

proclaimed, "This Local shall not be and does not consider itself bound by any negotiated terms or conditions of any Supplemental Agreement affecting the territorial jurisdiction or members of Local 70." In paragraph seven of that letter, Local 70 again stated, "[W]e wish to re-emphasize that we do not consider ourselves bound by those negotiations."

Frank Fitzsimmons, the International's then General Vice-President, responded to this attempt to withdraw from the multi-union unit by telegram on May 18 (Pet. App. 25-26, G.C.X. 11) and by detailed letter on May 19 (Pet. App. 26-29, G.C.X. 12). The letter of May 19 sets forth a clear and specific point-by-point rebuttal of every statement made in Local 70's letter attempting to withdraw from the multi-union bargaining unit. As stated by General Vice-President Fitzsimmons, Local 70 was part and parcel of the multi-union negotiations both voluntarily and according to the International's Constitution by which Local 70 is governed, and Local 70 never had been given the authority or understanding that it would have any right to negotiate separately or to ratify separately any agreement affecting its relations with employers in the Oakland area. To the contrary, Local 70 was bound by the National Master Freight Agreements and the supplements negotiated thereunder, including the Joint Council 7 Pick-up and Delivery Supplement. As noted in Mr. Fitzsimmons' letter, those agreements were ratified on May 18, 1970, and were binding on Local 70. Further, Mr. Fitzsimmons declared that Local 70 did not need to exe-

cute a new power of attorney to become or remain a part of the multi-union bargaining unit:

> "Local 70, together with the other Locals in Joint Council 7, at one time did seek such permission to withdraw within the time permitted by the Constitution. However, thereafter, all said Locals, including Local 70, by appropriate resolution withdrew said request and specifically agreed to remain part of the national unit. Local 70, therefore, is bound by the provisions of the Constitution relating to the National Agreement.
>
> "By reason of all the foregoing, it is clear that Local 70 is part of the national bargaining unit, and is bound by the national negotiations."

In addition to notifying the International Union that it did not consider itself bound by the national negotiations, Local 70 sent copies of its letters to all employer members of CTA operating facilities in Alameda County. This was accompanied by a letter from Local 70 to the employers which stated (Pet. App. 23, G.C.X. 9):

> "We are prepared to negotiate the terms and conditions of an agreement, including supplemental agreement, as you see fit.
>
> "Please notify this Local Union immediately of a convenient time and place for negotiations."

Shortly after the May 18 ratification, many of the members of CTA began implementing portions of the new contract with regard to employees represented by Local 70 (Pet. App. 29). Among the various provisions the companies began to institute was a new

seniority clause, which provided that an employee would not gain seniority until he had worked for the company for thirty days within a ninety-day period, as opposed to the old clause, which provided that an employee would gain seniority upon working thirteen days with in a thirty-day period. Another provision which most companies began to implement was the new job bidding procedure. The new contract provided that employees would be allowed to bid job classifications and shift, but routes were to be assigned by the company. The attempts of the companies to implement the provisions of the new agreement were, in many cases, thwarted by Teamsters Local 70, primarily by threats of picketing and actual strikes in May, June and July, until the National Labor Relations Board obtained injunctive relief against Local 70 under the provisions of Section 10(j) of the Act (Pet. App. 29-35, Tr. 557-562, 644-656, 713-718, 811-819, G.C.X. 14, 15).

B. THE DECISIONS BELOW

The Board concluded that Local 70 violated Section 8(b)(3) of the Act by refu ing to sign, accept and be bound by the National Master Freight Agreement and Joint Council 7 Pick-up and Delivery Supplemental Agreement negotiated for the multi-employer-multi-union collective bargaining unit of which Local 70 was a member (Pet. App. 35-36, 56). The Board further found that Local 70 violated Section 8(b)(1)(B) and 8(b)(3) of the Act by attempting to negotiate and negotiating individual contracts with

employer-members of the multi-employer bargaining unit, and by striking, picketing and threats of economic activity directed against members of the CTA for the purpose of separating them from the multi-employer bargaining unit, thereby restraining and coercing those employers in the selection of their representative for the purposes of collective bargaining or the adjustment of grievances (Pet. App. 36-37, 56). The Board ordered the Union to cease and desist from engaging in the aforementioned violations of Sections 8(b)(1)(B) and 8(b)(3) of the Act, to notify in writing the CTA and each of its members that the Union will adhere to and be bound by the terms of the National Master Freight Agreement and Joint Council 7 Pick-up and Delivery Supplemental Agreement, to sign such agreements upon request, to notify all employers with whom it has negotiated separate agreements that they are null and void and that the Union will cease giving effect to them, and to post appropriate notices (Pet. App. 2, 56-58).

In a *per curiam* opinion, the court of appeals sustained the Board's findings and conclusions, and enforced its order in full (Pet. App. 63-64).

ARGUMENT

Petitioner contends that the Board's order deprives its members of the right to choose their own collective bargaining representatives during the term of the agreement and "presumably forever" (Pet. 8-10). In

actuality, the Board's order does nothing of the sort. Instead, the Board has ordered the Union to be bound by the results of multi-union negotiations into which it freely and voluntarily entered and from which it thereafter illegally attempted to withdraw. The Board's order does not require the Union to continue to be represented for purposes of collective bargaining by the National Freight Industry Negotiating Committee or any other individual or group. Nor does the Board's order, or the parties' agreement, preclude Local 70 from effectuating a timely withdrawal from the multi-union bargaining unit with respect to future negotiations. *The Evening News Association, etc.*, 154 NLRB 1482, 1494 (1965). Thus, no "special circumstances" existed which warranted Local 70's untimely attempt to withdraw from the multi-union bargaining group. *National Labor Relations Board v. Sheridan Creations, Inc.*, 357 F.2d 245, 248 (2nd Cir. 1966).

Petitioner continues to assert, as it did before the Board and the court below, that the existence of the collective bargaining agreement to which it is bound "is in substantial dispute" or that the agreement is "not even in existence" (Pet. 11). However, as noted by the Trial Examiner, the National Master Freight Agreement is found in the record as General Counsel's Exhibits 19 and 26, and the Joint Council 7 Supplement thereto is found in the record as General Counsel's Exhibits 17, 18, 36 and 37 (Pet. App. 42-43).

Petitioner further complains (without specificity) of many evidentiary rulings of the Trial Examiner (Pet. 11-12). But, as Petitioner correctly notes, the rulings

were fully considered and affirmed by the Board (Pet. App. 2-3), and upheld by the Court of Appeals (Pet. App. 63-64). Thus, this issue does not warrant reexamination by this Court. *National Labor Relations Board v. Pittsburgh Steamship Company,* 340 U.S. 498, 502-503 (1951); *Universal Camera Corp. v. National Labor Relations Board,* 340 U.S. 474, 490-491 (1951).

Finally, Petitioner contends that substantial evidence on the record as a whole does not support the Board's findings (Pet. 12). The court of appeals found that the record adequately supported the Board's factual determinations, and this issue does not warrant review by this Court. In any event, the facts summarized above show that the Board was fully justified in ruling that the Union committed the unfair labor practices.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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July, 1973.